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In The

Supreme Court of the United States

NO. 325 OCTOBER TERM, 1962

PAUL GINSBURG, Petitioner,

v.

HON. DAVE W. LING, Judge of the United States District Court for the District of Arizona at Phoenix, Respondent.

MOTION TO REMAND

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PAUL GINSBURG,
Counsel for Petitioner.

Carlton House, 650 Grant Street
Pittsburgh 19, Pennsylvania

[illegible]

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Paul Ginsburg, respectfully moves this Honorable Court to vacate its Order entered this fifth day of November, 1962, denying his petition for writ of certiorari (*United States of America, Petitioner, v. The Ohio Power Company*, 353 U. S. 98, 1957); then to grant his Petition for Writ of Certiorari; and thereupon to reverse the Judgment sought to be reviewed and remand (28 U.S.C., section 2106) the above entitled proceeding with directions that the United States District Court for the District of Arizona at Phoenix adjudicate the issues involved herein, and particularly the issue of lack of consideration (*United States of America, Petitioner, v. Shotwell Manufacturing Company, et al.*, 355

U. S. 233, 1957, citing and relying upon *Communist Party. v. Subversive Activities Control Board,* 351 U. S. 115, and *Mesarosh v. United States,* 352 U. S. 1), and grant petitioner whatever relief to which he is entitled; and in support hereof avers:

1. The unopposed Petition for Writ of Certiorari was denied by an Order which was not accompanied by an opinion.

2. A review on writ of certiorari is a matter of "sound judicial discretion, and will be granted only where there are special and important reasons therefor" (Rule 19). It is respectfully submitted that it is evident from the Petition, there was full compliance therein with the applicable provisions of Rule 19.

3. It is apparent from the Questions Presented in the Petition that a biased District Judge, respondent herein, arbitrarily and discriminatorily refused a Motion which sought the adjudication of an unadjudicated issue of lack of consideration for an alleged oral agreement, which would necessarily result in a reversal of that Court's Judgment; that the Court of Appeals arbitrarily and erroneously denied a self-sustaining Motion for Leave to File Petition for Writ of Mandamus to compel the said District Judge to do so; and that the Order of the Court of Appeals was

(A) In conflict with decisions of other Courts of Appeals on the same matter and with applicable decisions of this Court; and

(B) Such a departure from the accepted and usual course of judicial proceedings, or a sanctioning of such a departure by a lower Court, as to call for an exercise of this Court's power of supervision.

4. In view of the foregoing, your petitioner was justified in taking the tenable and supported position that upon consideration of his Petition, this Honorable Court would review and reverse the Judgment sought to be reviewed. This Honorable Court's refusal to do so, however, can lead only to the logical conclusion that upon consideration of the said Petition, it should review and remand. Otherwise, the action of this Honorable Court in denying the Petition for Writ of Certiorari, becomes subject to a serious question not heretofore raised. That question concerns how the said denial of certiorari can be reconciled with the Oaths of the members of this Honorable Court, both their Judicial and Constitutional Oaths to uphold the Constitution. Your petitioner is now justified in presenting that question because it cannot be controverted that the actions of the lower Courts have deprived him of property and other important rights without due process of law as guaranteed by the Constitution of the United States, which the Chief Justice and the Associate Justices of this Honorable Court have sworn to uphold.

5. In view of the averments of the immediately preceding Paragraph 4, it is obvious that the complete relief with finality which your petitioner sought in his Petition for Writ of Certiorari was more than he was entitled to; and that the only relief to which he is actually entitled and should be afforded under the Constitution and laws of the United States is the relief sought in the instant Motion to Remand. Your petitioner is fully justified in this authorized position, by reason of the applicable decisions of this Honorable Court cited in the foregoing Motion.

6. The said applicable decisions of this Honorable Court cited herein make it manifest that this reviewing Court has repeatedly declined to review unadjudicated issues; that it is a condition precedent to review, that the issues presented to this Honorable Court must first be fully adjudicated in the lower Courts; that the trial Court, the District Court, is the only forum wherein to establish records on which to base adjudications; and that when the record filed in this Honorable Court shows that the lower Courts have failed to perform their function in respect to the establishment of records and the adjudication of the issues which should be based thereon, it is standard practice for this Honorable Court, in the accepted and usual course of judicial proceedings, to remand with directions. That is why experienced practitioners know that this Honorable Court is a Court of review, not a Court of Justice. It is respectfully submitted, therefore, that because your petitioner through no fault of his own has been unable to present to this Honorable Court a record which would entitle him to review and reversal, he certainly has nevertheless presented to this Honorable Court a record which requires review and remand.

7. A meticulous regard for the honor of the fair administration of justice in the Federal System requires the granting of this Motion to Remand.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner

Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania.
Dated: 5 November 1962.